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Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

Timothy Sawyer Knowlton

(517) 377-0711
Fax: (517) 364-9511
TSKknowlton@honigman.com

Via U.S. Mail
Via Facsimile

January 16, 2008

Mr. Delbert K. Rigsby
Attorney at Law
Federal Election Commission
Office of General Counsel
999 E. Street, N.W.
Washington, DC 20463

Re: MUR 5887
Schwarz for Congress and Robert Shuler,
in his official capacity as Treasurer

Dear Mr. Rigsby:

Preliminarily, thank you for extending the time to file a response in connection with this matter. Your cooperation in that regard is greatly appreciated. I am also sending you the Designation of Counsel forms provided to Schwarz for Congress.

This letter is written in response to the letter from Robert Lenhard, Chairman, Federal Election Commission ("FEC") of December 11, 2007, to Robert Shuler, Treasurer of Schwarz for Congress, together with an accompanying Factual and Legal Analysis, finding reason to believe Mr. Shuler and Schwarz for Congress violated 2 U.S.C. §§ 441a(f) and 434b of the Federal Election Campaign Act of 1971 (the "Act") by knowingly accepting and failing to disclose excessive contributions. Based on the accompanying Factual and Legal Analysis (the "Analysis"), this preliminary conclusion is based on certain statements made by Matt Maraden, suggesting to the FEC that the Schwarz Committee coordinated with the RMSP-PAC in connection with some \$91,300 in advertisements the RMSP-PAC produced and paid for. Initially, let me correct one factual misstatement in the Analysis. Mr. Maraden was not Congressman Schwarz's 2006 primary election campaign manager; he was, instead, the Congressman's Chief-of-Staff. Nonetheless, we would concede that Mr. Maraden was an "agent" of the Schwarz Committee as he had at least some of the authority set forth in 11 C.F.R. § 109.3(b).

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Delbert K. Rigsby
January 16, 2008
Page 2

What is ironic about this matter is that the excerpt from the 2007 book by Edward Sidlow, *Freshman Orientation: House Style and Home Style* quoted in the Analysis would suggest, at most, an unsuccessful attempt by Mr. Marsden to get RMSP-PAC to air advertisements that might benefit Congressman Schwarz earlier than these advertisements were aired. In fact, Mr. Marsden firmly believes that one factor in Congressman Schwarz's 2006 Republican Party primary defeat was that RMSP-PAC did not air pro-Schwarz advertisements earlier in the primary process. As the Marsden quote in the Analysis states, when RMSP-PAC actually did run their advertisements, "it was too little too late." In any event, although Mr. Marsden had certain brief conversations with the Executive Director of RMSP-PAC, to the extent they involved discussions about possible RMSP-PAC involvement in of Congressman Schwarz's 2006 primary election, this topic was initiated by the Executive Director. (Accompanying this letter is an Affidavit of Matt Marsden, attesting to the accuracy of the factual statements in this letter to the best of his recollection.)

It is necessary to go back to the 2004 Republican primary that Congressman Schwarz won to put the Marsden quote into proper context. In the 2004 Republican primary, one of Congressman Schwarz's opponents was Brad Smith. Mr. Smith had been supported by the Club for Growth. As you are aware, the Club for Growth and RMSP-PAC represent different philosophies within the Republican Party. In the 2004 Republican primary, RMSP-PAC made independent expenditures on behalf of Congressman Schwarz. Congressman Schwarz won this primary election and, ultimately the general election.

After Congressman Schwarz was sworn into office, sometime in January or February 2005, the RMSP-PAC's Executive Director asked Mr. Marsden when he was in Washington, D.C., whether the Schwarz campaign had found its 2004 efforts on behalf of Congressman Schwarz to be helpful. Mr. Marsden indicated that the campaign had, indeed, appreciated the RMSP-PAC's efforts on Congressman Schwarz's behalf. At this time, the RMSP-PAC Executive Director stated that the PAC would again provide assistance to Congressman Schwarz once Club for Growth selected a candidate to run against him in the 2006 election. That was the full extent of the discussion as it related to possible RMSP-PAC involvement in Congressman Schwarz's 2006 reelection campaign.

In late 2005, it became evident that Tim Wallberg would be the Club for Growth backed candidate in the 2006 election. Mr. Marsden ran into the RMSP-PAC Executive Director at a fundraiser – a fairly common experience – and the Executive Director volunteered that right after Club for Growth started putting advertisements on the air for Mr. Wallberg, the RMSP-PAC would put out advertisements to assist Congressman Schwarz. This is not a pledge that Mr. Marsden had sought, although he certainly would not discourage the RMSP-PAC from supporting his candidate, Congressman Schwarz. There was no discussion of the possible contents of the RMSP-PAC at this time or at any other time between Mr. Marsden and the Executive Director of RMSP-PAC. Indeed, Mr. Marsden did not know whether the RMSP-PAC was talking about electioneering communications, express advocacy, or both being put out on

Delbert K. Rigby
January 16, 2008
Page 3

behalf of Congressman Schwarz, and he never saw advertisements produced and run by the RMSP-PAC in the 2006 primary election until they were actually aired.

Mr. Marsden believes the first advertisements in favor of now-Congressman Wallberg run by Club for Growth appeared in January or February, 2006. Because of who employed them, the RMSP-PAC Executive Director and Mr. Marsden traveled in similar circles and frequently ran into each other at fundraisers or other events. After the first Wallberg advertisements were run by Club for Growth, when Mr. Marsden ran into the RMSP-PAC Executive Director, he recalls asking her if she had seen these ads, hoping that this would result in the RMSP-PAC running pro-Schwarz advertisements as the Executive Director had indicated would occur almost a year earlier. Thereafter, on a few occasions in early-2006, when he ran into the RMSP-PAC Executive Director, Mr. Marsden would mention that Club for Growth advertisements had been run in support of Mr. Wallberg and in opposition to Congressman Schwarz. Admittedly, Mr. Marsden hoped this would get RMSP-PAC ads run for Congressmen Schwarz.

Despite the word "hounded" that appears in the Marsden quote, Mr. Marsden does not think he used this term in his discussion with Mr. Sidlow. In any event, Mr. Marsden does not recall ever asking anybody with RMSP-PAC to run advertisements at any particular time, and he only mentioned the Club for Growth ads run in support of Mr. Wallberg when he ran into the RMSP-PAC Executive Director, hoping that she would remember her unsolicited statement that the RMSP-PAC would run ads in support of Congressman Schwarz once Club for Growth ads in favor of Mr. Wallberg were aired. In fact, Mr. Marsden gave up even mentioning the Club for Growth ads to the RMSP-PAC Executive Director after the RMSP-PAC ads had not been aired months after the first Club for Growth ads had appeared, as it was his view that if any RMSP-PAC ads ever ran, their utility would be far less than would have been the case had they actually commenced running when the first Club for Growth ads had appeared.

Because Mr. Marsden knew that coordination between the Schwarz campaign and the RMSP-PAC (or any other PAC that might make independent expenditures) was forbidden, he was careful not to suggest any content for the RMSP-PAC ads, to share any information he possessed about the Schwarz campaigns, activities, or plans or needs or, indeed, even to tell the RMSP-PAC when to run the ads, apart from mentioning that Club for Growth had run pro-Wallberg ads and hoping that this would result in the RMSP-PAC running the ads the Executive Director had over a year earlier stated the RMSP-PAC would run once Club for Growth ran pro-Wallberg ads.

Under the circumstances as they exist, there was not coordination under 11 CFR § 109.21 between RMSP-PAC and the Schwarz Committee because none of the conduct standards of 11 CFR § 109.21(d) are satisfied. Since Mr. Marsden did not request or suggest that RMSP-PAC run advertisements, 11 CFR § 109.21(d)(1)(i) is not met. While the Executive Director of RMSP-PAC said the PAC would run pro-Schwarz ads immediately after Club for Growth ran pro-Wallberg ads, this was an outright declarative statement to Mr. Marsden – not a suggestion

HONIGMAN

Delbert K. Rigsby

January 16, 2008

Page 4

to which the RMSP-PAC was seeking Mr. Marsden's consent or assent. 11 CFR § 109.21(d)(1)(ii). Moreover, Mr. Marsden had no idea what the content of the RMSP-PAC ads would be – undoubtedly, they did not even exist in late-2005 when the RMSP-PAC Executive Director told Mr. Marsden what the RMSP-PAC would do. While the Executive Director of the RMSP-PAC indicated that the PAC would run ads after the Club for Growth ran ads for Congressman Wallberg, there was never a discussion (or even a statement) about any particular date or dates for airing these theoretical ads – be they “electioneering communications” or “express advocacy.” Thus, 11 CFR § 109.21(d)(1) is inapplicable.

Similarly, 11 CFR § 109.21(d)(2) is inapplicable. There was no material involvement by Mr. Marsden with respect to the means of communication or timing or frequency of communications. The Executive Director of the RMSP-PAC volunteered that the advertisements would be aired after Club for Growth ads supporting Mr. Wallberg were aired. Mr. Marsden assumed, but it was not discussed, that if radio ads were run by Club for Growth, the RMSP-PAC would respond with radio ads and if television ads were run, the RMSP-PAC would respond with television ads. Although Mr. Marsden never specifically told RMSP-PAC to run ads on any given date or with any particular frequency, even had he done so, the “material involvement” prong of the conduct standards would not be met because the RMSP-PAC did not run the ads at the time Mr. Marsden wanted them run or as often as he would have wanted them run. This is obvious from the Marsden quote, in which he says that when the RMSP-PAC finally did run ads to support Congressman Schwarz they were “too little too late.” Clearly, any discussions Mr. Marsden had with respect to the frequency and timing of the ads were not “material” because the RMSP-PAC did not run the ads when Mr. Marsden believed they would be most effective or as frequently as he would have desired. 11 CFR § 109.21(d)(2). (Again, Mr. Marsden did not have discussions about where, when and how often the ads should be aired, but even had such occurred, they could not be deemed “material involvement” given that the ads were not run as Mr. Marsden desired.)

Similarly, there was not “substantial discussion” between Mr. Marsden and the Executive Director of RMSP-PAC that was “material to the creation, production or distribution” of any communications. First, as noted above, it is obvious that nothing Mr. Marsden said to the Executive Director was “material”, as the advertisements were not distributed when, or as often as, Mr. Marsden would have desired. Second, 11 CFR § 109.21(d)(3) seemingly focuses on the candidate or authorized committee sharing information about the campaign plans, projects, activities or needs that is material to the “creation, production or distribution of the communication.” As Mr. Marsden never discussed anything with the RMSP-PAC about the Schwarz campaign’s plans, projects, activities or needs, 11 CFR § 109.21(d)(3) is not implicated.

None of the remaining conduct standards have even arguable applicability to this matter. The Schwarz Committee and RMSP-PAC did not use the same vendor. 11 CFR § 109.21(d)(4). No former employees or independent contractors of Congressman Schwarz were involved with RMSP-PAC, and that PAC, itself, was not a former independent contractor of Congressman Schwarz. 11 CFR § 109.21(d)(5). The RMSP-PAC ads did not disseminate, distribute, or

HONIGMAN

Delbert K. Rigsby
January 16, 2008
Page 5


republish material that constituted Schwarz campaign material; thus, 11 CFR § 109.21(d)(6) is not implicated.

As to Robert Shuler, Treasurer of Schwarz for Congress, because there was no coordination between the Schwarz Committee and the RMSP-PAC, he cannot have knowingly accepted and failed to report excessive contributions that allegedly arose from such coordination. In any event, Mr. Marsden never discussed with Mr. Shuler any of his conversations with the Executive Director of the RMSP-PAC. Thus, even if there really had been coordination between the RMSP-PAC and Schwarz for Congress, arising from the contacts between Mr. Marsden and the Executive Director of the RMSP-PAC (and there was not), Mr. Shuler knew nothing about such contacts and was completely unaware of an alleged contribution, arising from alleged coordination between the Schwarz Committee and the RMSP-PAC.

Thank you for your consideration of this matter. Please feel free to contact me in connection with this matter.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



Timothy Sawyer Knowlton

TSK/lmh
Encs.



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Statement of Designation of Counsel
(Respondent/Witness)

MUR: 5887

Name of Counsel: Timothy Sawyer Knowlton & John P. Rich

Firm: Hogan Miller Schwartz and Cohn LLP

222 N. Washington Sq., Suite 400
Lansing, MI 48933

Telephone: (517) 377-0711

Fax: (517) 364-9511

The above named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/16/2008
Date

[Signature]
Signature

Name (Print): Schwartz for Congress

Address: P.O. Box 2063

Battle Creek, MI 49016

Telephone: Home ()

Business (248) 802-8718

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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Washington, DC 20463

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Statement of Designation of Counsel
(Respondent/Witness)

MUR: 5887

Name of Counsel: Timothy Sawyer Knowlton & John P. Rich

Firm: Hoytman-Miller Schwartz and Goh, LLP

222 N. Washington Sq., Suite 400
Lansing, MI 48223

Telephone: (517) 377-0711

Fax: (517) 264-9511

The above named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

1/16/2008

Date

[Signature]
Signature

Name (Print): Robert Scholer, in his official capacity as Treasurer

Address: P.O. Box 2063

Battle Creek, MI 49016

Telephone: Home ()

Business (248) 802-8718

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